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similarly situated and aggrieved,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

PRIMITIVO PEREZ, an individual and on
behalf of all others similarly situated and
aggrieved,

Plaintiffs,

v.

D&G RESTAURANTS, LLC, a California
limited liability company, doing business as
“Tavern House”; GREGG SOLOMON, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2021-01209638-CU-OE-CXC

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. FAILURE TO TIMELY PAY WAGES AND PENALTIES PER LABOR CODE § 210;
9. UNFAIR COMPETITION;
10. PENALTIES PER LABOR CODE § 226.3;
1. PENALTIES PER LABOR CODE § 558;
2. PENALTIES PER LABOR CODE § 1174.5;
3. PENALTIES PER LABOR CODE § 1197.1; and
4. PENALTIES PER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff PRIMITIVO PEREZ (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and aggrieved (collectively, “Plaintiffs”), and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against D&G RESTAURANTS, LLC, doing business as “Tavern House” (“D&G”), GREGG SOLOMON (“Solomon”), and any of their respective subsidiaries or affiliated companies within the State of California (D&G, Solomon, and DOES 1 through 100, as further defined below, are collectively hereinafter referred to as “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a Representative Action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against D&G and any of its respective subsidiaries or affiliated companies within the State of California and Solomon an individual, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff PRIMITIVO PEREZ is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, making and preparing food to serve to customers. Plaintiff is informed and believes, and based thereon alleges

1 that Plaintiff PRIMITIVO PEREZ worked for Defendants from approximately July of 2020 through
2 approximately December of 2020.

3 **B. Defendants**

4 4. Plaintiff is informed and believes and based thereon alleges that defendant D&G is,
5 and at all times relevant hereto was, a limited liability company organized and existing under and
6 by virtue of the laws of the State of California and doing business in, among other places, the County
7 of Orange, State of California. At all relevant times herein, defendant D&G employed Plaintiff and
8 similarly situated and aggrieved employees within the State of California.

9 5. Plaintiff is informed and believes and based thereon alleges that defendant D&G is,
10 and at all times relevant hereto was, a “person” as defined in Labor Code section 17 and Cal. Bus.
11 & Prof. Code § 17201.

12 6. Plaintiff is informed and believes and based thereon alleges that defendant Solomon
13 is, and at all times relevant hereto was, an individual residing in California, as well as the principal,
14 owner, officer, director and/or managing agent for D&G and DOES 1 through 100, as further
15 defined below. Plaintiff is further informed and believes and based thereon alleges that Solomon
16 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
17 provisions in violation of Labor Code section 558.1.

18 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
19 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
20 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
21 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
22 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
23 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
24 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
25 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
26 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
27 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
28 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall

1 include D&G, Solomon, and any of their parent, subsidiary, or affiliated companies within the State
2 of California, as well as DOES 1 through 100 identified herein.

3 **JOINT LIABILITY ALLEGATIONS**

4 8. Plaintiff is informed and believes and based thereon alleges that all the times
5 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
6 representative, joint venture or co-conspirator of each of the other defendants, either actually or
7 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
8 employment, joint venture, and conspiracy.

9 9. All of the acts and conduct described herein of each and every corporate defendant
10 was duly authorized, ordered, and directed by the respective and collective defendant corporate
11 employers, and the officers and management-level employees of said corporate employers. In
12 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
13 their said employees, agents, and representatives, and each of them; and upon completion of the
14 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
15 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
16 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
17 aforementioned corporate employees, agents and representatives.

18 10. Plaintiff is further informed and believes and based thereon alleges that Solomon
19 violated, or caused to be violated, the above-referenced and below-referenced Labor Code
20 provisions in violation of Labor Code section 558.1.

21 11. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
22 unity of interest and ownership between and among Defendants, and each of them, that their
23 individuality and separateness have ceased to exist.

24 12. Plaintiff is informed and believes, and based thereon alleges that despite the
25 formation of the purported corporate, DBA, and/or limited liability existence of D&G and DOES 1
26 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same
27 with Solomon and DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but
28 not limited to, the following reasons:

- 1 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
2 Defendants who personally committed the wrongful and illegal acts and violated the
3 laws as set forth in this Complaint, and who has hidden and currently hide behind the
4 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some
5 other wrongful or inequitable purpose;
- 6 B. The Individual Defendants derive actual and significant monetary benefits by and
7 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
8 Defendants as the funding source for the Individual Defendants' own personal
9 expenditures;
- 10 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
11 and the Alter Ego Defendants, while really one and the same, were segregated to
12 appear as though separate and distinct for purposes of perpetrating a fraud,
13 circumventing a statute, or accomplishing some other wrongful or inequitable
14 purpose;
- 15 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
16 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
17 mentioned herein were, so mixed and intermingled that the same cannot reasonably
18 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
19 are, and at all relevant times mentioned herein were, used by the Individual
20 Defendants as mere shells and conduits for the conduct of certain of their, and each
21 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
22 herein were, the alter egos of the Individual Defendants;
- 23 E. The recognition of the separate existence of the Individual Defendants and the Alter
24 Ego Defendants would promote injustice insofar that it would permit defendants to
25 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
26 Code, and other statutory violations. The corporate existence of these defendants
27 should thus be disregarded in equity and for the ends of justice because such
28 disregard is necessary to avoid fraud and injustice to Plaintiff herein;

1 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
2 Defendants (and vice versa), and the fiction of their separate corporate, limited
3 liability, and/or DBA existence must be disregarded.

4 13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
5 thereon alleges that Defendants, and each of them, are joint employers.

6 **JURISDICTION**

7 14. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
8 of Civil Procedure section 410.10.

9 15. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
10 sections 392, *et seq.* because, among other things, Orange County is where the causes of action
11 complained of herein arose; the county in which the employment relationship began; the county in
12 which performance of the employment contract, or part of it, between Plaintiffs, or some of them,
13 and Defendants was due to be performed; the county in which the employment contract, or part of
14 it, between Plaintiffs, or some of them, and Defendants was actually performed; the county in which
15 Defendants, or some of them, have their principal place of business; and the county in which
16 Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect
17 on Class Members and Aggrieved Employees, or some of them, who reside in Orange County and
18 the State of California.

19 16. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
20 Defendants during the applicable statutory period and suffered one or more of the Labor Code
21 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
22 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
23 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
24 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
25 employees of Defendants during the Civil Penalty Period.

26 17. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
27 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
28 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the

1 PAGA allegations described herein is not required.

2 18. During the period beginning one (1) year preceding the provision of notice to the
3 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
4 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
5 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194,
6 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

7 19. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
8 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
9 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
10 specified in Labor Code section 2699.3.

11 20. On or around May 18, 2021, Plaintiff provided written notice pursuant to Labor Code
12 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violations
13 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as
14 by certified mail, with return receipt requested to Defendants, and each of them.

15 21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
16 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
17 calendar days of the May 18, 2021 postmarked date of the herein-described notice sent by Plaintiff
18 to the LWDA and Defendants.

19 22. On April 6, 2020, the Judicial Council of California approved Appendix I –
20 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
21 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
22 action were tolled from April 6, 2020 until October 1, 2020.

23 **FACTUAL BACKGROUND**

24 23. For at least four (4) years prior to the filing of this action and continuing to the
25 present, Defendants have failed to pay overtime wages to Plaintiff and Class Members, or some of
26 them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff
27 and Class Members working over eight (8) hours per day, twelve (12) hours per day, forty (40)
28 hours per week, and/or seven (7) consecutive work days in a work week without being properly

1 compensated for hours worked in excess of (8) hours per day in a work day, twelve (12) hours per
2 day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh
3 consecutive work day in a work week by, among other things, failing to accurately track and/or pay
4 for all minutes actually worked at the proper overtime rate of pay; engaging, suffering, or permitting
5 employees to work off the clock, including, without limitation, by requiring employees: to leave
6 work late without being able to clock in for all that time, to suffer under Defendants' control due to
7 waiting in lines for clocking in, to complete post-shift tasks after clocking out, to clock out for meal
8 periods and continue working and/or suffering under Defendants' control, to don and doff uniforms
9 and/or safety equipment off the clock, to make or respond to telephone calls and/or text messages
10 off the clock, and/or go through temperature checks off the clock; editing and/or manipulation of
11 time entries to show lesser hours than actually worked, and for paying straight pay instead of
12 overtime pay, to the detriment of Plaintiff and Class Members.

13 24. For at least four (4) years prior to the filing of this Action and continuing to the
14 present, Defendants have failed to pay minimum wages to Plaintiff and Class Members, or some of
15 them, in violation of California state wage and hour laws as a result of, among other things, at times,
16 failing to accurately track and/or pay for all minutes actually worked at their regular rate of pay that
17 is above the minimum wage; engaging, suffering, or permitting employees to work off the clock,
18 including, without limitation, by requiring employees: to leave work late without being able to clock
19 in for all that time, to suffer under Defendants' control due to waiting in lines for clocking in, to
20 complete post-shift tasks after clocking out, to clock out for meal periods and continue working
21 and/or suffering under Defendants' control, to don and doff uniforms and/or safety equipment off
22 the clock, to make or respond to telephone calls and/or text messages off the clock, and/or go through
23 temperature checks off the clock; editing and/or manipulation of time entries to show lesser hours
24 than actually worked; failing to pay all reporting time pay; and failing to pay split shift premiums,
25 to the detriment of Plaintiff and Class Members.

26 25. For at least four (4) years prior to the filing of this Action and continuing to the
27 present, Defendants have failed to provide Plaintiff and Class Members, or some of them, full,
28 timely thirty (30) minute uninterrupted meal period for days on which they worked more than five

1 (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which
2 they worked in excess of ten (10) hours in a work day, including, without limitation: by interrupting
3 meal periods; not providing timely meal periods; failing to provide first and second meal periods;
4 providing short meal periods; otherwise requiring on-duty/on-call meal periods; and auto-deducting
5 meal periods that could not be auto-deducted by law or during which employees worked, and failing
6 to provide compensation for such unprovided meal periods as required by California wage and hour
7 laws.

8 26. For at least four (4) years prior to the filing of this action and continuing to the
9 present, Defendants have failed to authorize and permit Plaintiff and Class Members, or some of
10 them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
11 thereof in which they are completely relieved of all of their duties, including, without limitation: by
12 failing to provide rest periods all together; requiring that they be bundled together and/or with meal
13 periods; interrupting them; not providing them in a timely fashion; not permitting employees to
14 leave the premises; and otherwise requiring on-duty/on-call rest periods, and failed to provide
15 compensation for such unprovided rest periods as required by California wage and hour laws.

16 27. For at least three (3) years prior to the filing of this action and continuing to the
17 present, Defendants have failed to pay Plaintiff and Class Members, or some of them, the full
18 amount of their wages owed to them upon termination and/or resignation as required by Labor Code
19 sections 201 and 202, including for, without limitation, failing to pay overtime wages, minimum
20 wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

21 28. For at least one (1) year prior to the filing of this Action and continuing to the present,
22 Defendants have failed to furnish Plaintiff and Class Members, or some of them, with itemized wage
23 statements that accurately reflect gross wages earned; total hours worked; net wages earned; all
24 deductions; all applicable hourly rates in effect during the pay period and the corresponding number
25 of hours worked at each hourly rate; the name(s) and address(es) of the legal entity(ies) that is/are
26 the employer(s); and other such information as required by Labor Code section 226, subdivision (a).
27 As a result thereof, Defendants have further failed to furnish employees with an accurate calculation
28 of gross and gross wages earned, as well as gross and net wages paid.

1 29. For at least three (3) years prior to the filing of this action and continuing to the
2 present, Defendants have failed to indemnify Plaintiff and Class Members, or some of them, with
3 their costs incurred for purchasing uniforms, separately laundering mandatory work uniforms; for
4 the purchase of safety equipment, including, without limitation, slip-resistant boots; and for the
5 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
6 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
7 Code section 2802, and other statutory and common law offenses.

8 30. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of failing to comply with Labor Code section 226, subdivision (a) by failing to keep adequate or
10 accurate time records including wage statements and similar payroll documents under Labor Code
11 section 226, intentionally failing to furnish Plaintiff and other Aggrieved Employees with
12 documents signed to obtain or hold employment under Labor Code section 432, personnel records
13 under Labor Code section 1198.5, and time records under Labor Code section 1174, making it
14 difficult for Plaintiff and other Aggrieved Employees to calculate their unpaid wages and/or
15 premium payments, to the detriment of Plaintiff and other Aggrieved Employees.

16 31. At all relevant times mentioned herein, Defendants have had a policy or practice of
17 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
18 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
19 Employees with the rates of pay and overtime rates of pay applicable to their employment;
20 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
21 name, address, and telephone number of the workers' compensation insurance carrier; information
22 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
23 under Labor Code section 2810.5.

24 32. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
25 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
26 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
27 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
28 all other Aggrieved Employees.

1 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
3 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
4 any calendar month shall be paid for between the 16th and 26th day of the month during which the
5 labor was performed, and labor performed between the 16th and the last day, inclusive of any
6 calendar month, shall be paid for between the 1st and 10th day of the following month.”

7 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
8 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
9 and experience they obtained at Defendants for purposes of competing with Defendants, including,
10 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
11 a prospective employer, and from disclosing who else works at Defendants and under what
12 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
13 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
14 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
15 Code sections 232, 232.5, and 1197.5, subdivision (k).

16 35. Defendants had and have a policy or practice of preventing Plaintiff and/or other
17 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
18 to their managers or outside to private attorneys or government officials, among others, in violation
19 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
20 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
21 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
22 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
23 of Labor Code sections 232 and 232.5.

24 36. Defendants had and have a policy or practice of preventing Plaintiff and/or other
25 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
26 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
27 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
28 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of

1 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
2 economic liberty.

3 37. Plaintiff, on his own behalf and on behalf of Class Members, brings this action
4 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226,
5 226.7, 227.3, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, *et al.*, and the applicable rules and
6 regulations of the IWC California Wage Orders, seeking overtime wages, minimum wages, payment
7 of premium wages for missed meal and rest periods, waiting time penalties, wage statement
8 penalties, reimbursement for expenses incurred in furtherance of work duties, payment of vested
9 vacation time at the proper rate of pay, other such provisions of California law, and reasonable
10 attorneys' fees and costs.

11 38. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
12 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
13 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
14 appropriate and effective means to prevent further violations, as well as all monies owed but
15 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
16 restitution of amounts owed.

17 39. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
18 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
19 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
20 Employees pursuant to PAGA.

21 **CLASS ACTION ALLEGATIONS**

22 40. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
23 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
24 and former non-exempt employees of Defendants within the State of California at any time
25 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
26 of the class action is provided to the class (collectively referred to as "Class Members").

27 41. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
28 to amend or modify the class description with greater specificity, further divide the defined class

1 into subclasses, and to further specify or limit the issues for which certification is sought.

2 42. This action has been brought and may properly be maintained as a class action under
3 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
4 of interest in the litigation and the proposed Class is easily ascertainable.

5 **A. Numerosity**

6 43. The potential Class Members as defined are so numerous that joinder of all the
7 members of the Class is impracticable. While the precise number of Class Members has not been
8 determined yet, Plaintiff is informed and believes that there are at least fifty (50) Class Members
9 employed by Defendants within the State of California.

10 44. Accounting for employee turnover during the relevant periods necessarily increases
11 this number. Plaintiff alleges Defendants' employment records would provide information as to the
12 number and location of all Class Members. Joinder of all members of the proposed Class is not
13 practicable.

14 **B. Commonality**

15 45. There are questions of law and fact common to Class Members. These common
16 questions include, but are not limited to:

- 17 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
18 worked at a proper overtime rate of pay?
- 19 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
20 for all other time worked at the employee's regular rate of pay and a rate of pay that
21 is greater than the applicable minimum wage?
- 22 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
23 Class Members to take compliant meal periods?
- 24 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
25 with additional wages for missed or interrupted meal periods?
- 26 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
27 Class Members to take compliant rest periods?
- 28 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members

1 with additional wages for missed rest periods?

2 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
3 Members upon termination or resignation all wages earned?

4 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
5 section 203?

6 I. Did Defendants violate Labor Code section 227.3 by not providing Class Members
7 with compensation at their final rate of pay for vested paid vacation time?

8 J. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
9 Class Members with accurate wage statements?

10 K. Did Defendants fail to pay Class Members in a timely fashion as required under
11 Labor Code section 204?

12 L. Did Defendants fail to indemnify Class Members for all necessary expenditures or
13 losses incurred in direct consequence of the discharge of their duties or by obedience
14 to the directions of Defendants as required under Labor Code section 2802?

15 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
16 section 17200, *et seq.*, by their unlawful practices as alleged herein?

17 N. Are Class Members entitled to restitution of wages under Business and Professions
18 Code section 17203?

19 O. Are Class Members entitled to costs and attorneys' fees?

20 P. Are Class Members entitled to interest?

21 **C. Typicality**

22 46. The claims of Plaintiff herein alleged are typical of those claims which could be
23 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
24 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
25 damages arising out of and caused by Defendants' common course of conduct in violation of laws
26 and regulations that have the force and effect of law and statutes as alleged herein.

27 **D. Adequacy of Representation**

28 47. Plaintiff will fairly and adequately represent and protect the interest of Class

Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and hour class actions.

E. Superiority of Class Action

48. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to Class Members predominate over any questions affecting only individual Class Members. Class Members, as further described therein, have been damaged and are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the violation of the Labor Code at times, as set out herein.

49. Class action treatment will allow Class Members to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

50. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

51. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable Wage Orders.

52. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

53. At all times relevant to this Complaint, Labor Code section 510 further provided that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of

1 pay.”

2 54. For four (4) years prior to the filing of the Complaint in this Action through the
3 present, Plaintiff and Class Members worked for Defendants during shifts that consisted of more
4 than eight (8) hours in a workday, more than twelve (12) hours in a workday, and/or more than forty
5 hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid
6 overtime wages for all hours worked as a result of, including but not limited to, Defendants failing
7 to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay;
8 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
9 by requiring employees: to leave work late without being able to clock in for all that time, to suffer
10 under Defendants’ control due to waiting in lines for clocking in, to complete post-shift tasks after
11 clocking out, to clock out for meal periods and continue working and/or suffering under Defendants’
12 control, to don and doff uniforms and/or safety equipment off the clock, to make or respond to
13 telephone calls and/or text messages off the clock, and/or go through temperature checks off the
14 clock; edited and/or manipulated time entries to show lesser hours than actually worked, and for
15 paying straight pay instead of overtime pay, to the detriment of Plaintiff and Class Members.

16 55. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
17 than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per workweek,
18 and/or seven (7) straight workdays without properly compensating overtime wages at the proper
19 overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code,
20 among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

21 56. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
22 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
23 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
24 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

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1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages – Against All Defendants)**

3 57. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 58. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

7 59. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
8 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
9 Defendants' control.

10 60. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed to accurately track and/or pay for all hours and minutes actually worked
12 at Plaintiff and/or Class Members' regular rate of pay that is above the minimum wage; engaged,
13 suffered, or permitted employees to work off the clock, including, without limitation, by requiring
14 employees: to leave work late without being able to clock in for all that time, to suffer under
15 Defendants' control due to waiting in lines for clocking in, to complete post-shift tasks after clocking
16 out, to clock out for meal periods and continue working and/or suffering under Defendants' control,
17 to don and doff uniforms and/or safety equipment off the clock, to make or respond to telephone calls
18 and/or text messages off the clock, and/or go through temperature checks off the clock; edited and/or
19 manipulated employee time entries to show lesser hours than actually worked; failed to pay all
20 reporting time pay; and failed to pay split shift premiums, to the detriment of Plaintiff and Class
21 Members.

22 61. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
23 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
24 for all hours worked or otherwise due.

25 62. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
26 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
27 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
28 damages, reasonable attorneys' fees and costs of suit.

1 **THIRD CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods – Against All Defendants)**

3 63. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 64. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

7 65. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
8 employ an employee for a work period of more than five (5) hours without a timely meal break of
9 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
10 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
11 per day without providing the employee with a second timely meal period of not less than thirty (30)
12 minutes in which the employee is relieved of all of his or her duties.

13 66. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
14 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
15 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
16 of compensation for each workday that the meal period is not provided.

17 67. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Plaintiff and Class Members were not provided complete, timely 30-minute, duty-free
19 uninterrupted meal periods every five hours of work without waiving the right to take them, as
20 permitted. Moreover, Defendants failed to provide one (1) additional hour of pay at the Class
21 Member's regular rate of compensation on the occasions that Class Members were not provided
22 compliant meal periods.

23 68. By their failure to provide Plaintiff and Class Members compliant meal periods as
24 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
25 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
26 violated the provisions of Labor Code section 512 and applicable Wage Orders.

27 69. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
28 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay

owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

70. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

71. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

72. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by applicable Wage Orders.

73. California law and applicable Wage Orders require that employers "authorize and permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

74. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

75. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were not authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not authorized or permitted to take compliant rest periods.

76. By their failure to authorize and permit Plaintiff and Class Members to take rest periods contemplated by California law, and one (1) additional hour of pay at the employee's regular rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

77. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for rest periods that they were not authorized or permitted to take.

78. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

79. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

80. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

81. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

82. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure to provide all overtime and minimum wages as well as unpaid vacation mentioned above,

1 failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination in
2 accordance with Labor Code sections 201 or 202.

3 83. Plaintiff is informed and believes Defendants' failure to pay Plaintiff and Class
4 Members all wages earned prior to termination or resignation in accordance with Labor Code
5 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
6 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
7 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
8 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
9 or resignation.

10 84. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
11 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
12 resignation, until paid, up to a maximum of thirty (30) days.

13 85. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
14 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
15 prior to termination or resignation.

16 86. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
17 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
18 waiting time penalties, interest, and their costs of suit, as well.

19 **SIXTH CAUSE OF ACTION**

20 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

21 87. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth hereat.

23 88. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

25 89. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
26 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
27 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
28 wages earned; all deductions; all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate; and the name(s) and address(es) of the
2 legal entity(ies) that is/are the employer(s), among other things.

3 90. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
4 before the filing of the Complaint in this Action through the present, Defendants failed to comply
5 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
6 failure to furnish Plaintiff and Class Members with accurate itemized statements that accurately
7 reflect, among other things, gross wages earned; total hours worked; net wages earned; all
8 deductions; all applicable hourly rates in effect during the pay period and the corresponding number
9 of hours worked at each hourly rate; and the name(s) and address(es) of the legal entity(ies) that
10 is/are the employer(s), among other things.

11 91. Defendants' failure to provide Plaintiff and Class Members with accurate wage
12 statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff
13 and the other Class Members with accurate wage statements, but, at times, willfully provided wage
14 statements that Defendants knew were not accurate.

15 92. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
16 suffered injury. The absence of accurate information on Class Members' wage statements at times
17 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
18 mathematical computations to determine the amount of wages owed; causes difficulty and expense
19 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
20 about wages and amounts deducted from wages to state and federal governmental agencies, among
21 other things.

22 93. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
23 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
24 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
25 pay period, not to exceed an aggregate \$4,000.00 per employee.

26 94. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
27 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
28 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable

1 attorneys' fees, and costs of suit.

2 **SEVENTH CAUSE OF ACTION**

3 **(Violation of Labor Code § 2802 – Against All Defendants)**

4 95. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs as though fully set forth hereat.

6 96. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

8 97. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
9 his or her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties . . .”

11 98. For three (3) years prior to the filing of the Complaint in this Action through the
12 present, Defendants required Plaintiff and Class Members, or some of them, to incur necessary
13 expenditures or losses in direct consequence of the discharge of their duties or at the obedience to
14 the directions of Defendants that included, without limitation: costs incurred in purchasing uniforms,
15 separately laundering mandatory work uniforms; for the purchase of safety equipment, including,
16 without limitation, slip-resistant boots; and for the purchase and maintenance of cellular phones and
17 cellular phone plans.

18 99. During that time period, Plaintiff is informed and believes, and based thereon alleges
19 that Defendants failed and refused, and still fail and refuse, to reimburse Plaintiff and Class
20 Members for those losses and/or expenditures.

21 100. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
23 herein-described losses and/or expenditures.

24 101. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
25 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
26 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
27 costs of suit.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Failure To Timely Pay Wages During Employment and Penalties Per Labor Code § 210 –**
3 **Against All Defendants)**

4 102. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs as though fully set forth hereat.

6 103. At all relevant times, Plaintiff, Class Members and Aggrieved Employees were
7 employees or former employees of Defendants covered by Labor Code section 204 and applicable
8 Wage Orders.

9 104. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
10 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
11 during which the labor was performed, and labor performed between the 16th and the last day,
12 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
13 month.”

14 105. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
15 independent and apart from, any other penalty provided in this article, every person who fails to pay
16 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
17 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
18 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
19 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
20 percent of the amount unlawfully withheld.”

21 106. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
22 before the filing of the Complaint in this Action through the present, Defendants employed policies
23 and practices that resulted in not paying Plaintiff, Class Members and Aggrieved Employees in
24 accordance with Labor Code section 204.

25 107. Pursuant to Labor Code section 210, Plaintiff, Class Members and Aggrieved
26 Employees are entitled to recover penalties for Defendants’ violations of Labor Code section 204,
27 in the amount of one hundred dollars (\$100) for each initial violation per Class Member and/or
28 Aggrieved Employee, and two hundred dollars (\$200) for each subsequent violation in connection

1 with each payment that was made in violation of Labor Code section 204 per Class Member and/or
2 Aggrieved Employee, plus 25 percent of the amount unlawfully withheld.

3 108. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and
4 1032, and Civil Code section 3287, Plaintiff, Class Members and Aggrieved Employees are entitled
5 to recovery of penalties, interest, and their costs of suit, as well.

6 **NINTH CAUSE OF ACTION**

7 **(Unfair Competition – Against All Defendants)**

8 109. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs as though fully set forth hereat.

10 110. Plaintiff is informed and believes, and based thereon alleges that the unlawful
11 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
12 and Professions Code section 17200. Due to their unlawful business practices in violation of the
13 Labor Code, Defendants have gained a competitive advantage over other comparable companies
14 doing business in the State of California that comply with their obligations to compensate employees
15 in accordance with the Labor Code.

16 111. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
17 Members have suffered injury in fact and lost money or property.

18 112. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
19 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
20 Code and requiring the establishment of appropriate and effective means to prevent further
21 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
22 including interest thereon, in which they had a property interest and which Defendants nevertheless
23 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
24 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
25 by their failure to comply with the Labor Code.

26 113. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
27 Procedure section 1032 and interest under Civil Code section 3287.

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1 **TENTH CAUSE OF ACTION**

2 **(Civil Penalties Per Labor Code § 226.3 – Against All Defendants)**

3 114. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 115. Defendants had and have a policy or practice of failing to comply with Labor Code
6 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
7 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
8 wages earned; the name and address of each employer with whom they have been placed to work;
9 all applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate; the legal name of the employer; and other such information as required
11 by Labor Code section 226, subdivision (a).

12 116. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
13 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
14 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
16 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

17 117. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
18 this section are in addition to any other penalty provided by law.”

19 118. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
20 and have a policy or practice of failing to furnish non-exempt employees, including, without
21 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
22 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
23 corresponding number of hours worked at each hourly rate in effect during the pay period; the
24 name(s) and address(es) of the legal entity(ies) that is/are the employer(s); and other such information
25 as required by Labor Code section 226, subdivision (a).

26 119. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
27 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
28 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period

1 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
2 period for each subsequent violation.

3 **ELEVENTH CAUSE OF ACTION**

4 **(Violation of Labor Code § 558 – Against All Defendants)**

5 120. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth hereat.

7 121. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
8 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
9 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
10 penalty as follows:

11 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
12 pay period for which the employee was underpaid in addition to an amount sufficient
13 to recover underpaid wages;

14 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
15 employee for each pay period for which the employee was underpaid in addition to
16 an amount sufficient to recover underpaid wages;

17 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

18 122. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
19 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
20 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
21 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
22 their employment and after their employment separation; receive accurate, itemized wage
23 statements; be provided with the opportunity to inspect employment records; be provided with
24 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
25 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
26 of pay.

27 123. As a direct and proximate result of the herein-described Labor Code violations,
28 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover

1 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
2 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
3 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

4 **TWELFTH CAUSE OF ACTION**

5 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

6 124. Plaintiff realleges and incorporates by reference all of the allegations contained in
7 the preceding paragraphs as though fully set forth hereat.

8 125. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
9 every person employing labor in California to “[a]llow any member of the commission or the
10 employees of the Division of Labor Standards Enforcement free access to the place of business or
11 employment of the person to secure any information or make any investigation that they are
12 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
13 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
14 or papers of the person.”

15 126. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
16 every person employing labor in California to “[k]eep a record showing the names and addresses of
17 all employees employed and the ages of all minors.”

18 127. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
19 every person employing labor in California to “[k]eep, at a central location in the state or at the
20 plants or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
22 piece rate paid to, employees employed at the respective plants or establishments. These records
23 shall be kept in accordance with rules established for this purpose by the commission, but in any
24 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
25 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
26 earned.”

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1 128. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
2 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
3 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
4 member of the commission or employees of the division to inspect records pursuant to subdivision
5 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

6 129. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
7 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
8 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
9 inspection of records as required by Labor Code subdivision (b).

10 130. As a direct and proximate result of the herein-described Labor Code violations,
11 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
12 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
13 hundred dollars (\$500) per violation per Aggrieved Employee.

14 **THIRTEENTH CAUSE OF ACTION**

15 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

16 131. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth hereat.

18 132. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
19 person acting either individually or as an officer, agent, or employee of another person, who pays
20 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
21 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
22 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
23 Section 203 as follows:

- 24 (1) For any initial violation that is intentionally committed, one hundred dollars
25 (\$100) for each underpaid employee for each pay period for which the
26 employee is underpaid. This amount shall be in addition to an amount
27 sufficient to recover underpaid wages, liquidated damages pursuant to Section
28 1194.2, and any applicable penalties imposed pursuant to Section 203.

1 (2) For each subsequent violation for the same specific offense, two hundred fifty
2 dollars (\$250) for each underpaid employee for each pay period for which the
3 employee is underpaid regardless of whether the initial violation is
4 intentionally committed. This amount shall be in addition to an amount
5 sufficient to recover underpaid wages, liquidated damages pursuant to Section
6 1194.2, and any applicable penalties imposed pursuant to Section 203.

7 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
8 Section 203, recovered pursuant to this section shall be paid to the affected
9 employee.”

10 133. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
11 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
12 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours
13 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
14 accurately track and/or pay for all minutes and hours actually worked; engaging, suffering, or
15 permitting employees to work off the clock, including, without limitation, by requiring employees:
16 to leave work late without being able to clock in for all that time, to suffer under Defendants’ control
17 due to waiting in lines for clocking in, to complete post-shift tasks after clocking out, to clock out
18 for meal periods and continue working and/or suffering under Defendants’ control, to don and doff
19 uniforms and safety equipment off the clock, to make or respond to telephone calls and/or text
20 messages off the clock, and/or go through temperature checks off the clock; editing and/or
21 manipulation of time entries to show lesser hours than actually worked; failing to pay all reporting
22 time pay; and failing to pay split shift premiums.

23 134. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
26 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
27 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
28 subsequent violation.

1 **FOURTEENTH CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

3 135. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 136. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
6 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
7 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
8 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
9 action brought by an aggrieved employee on behalf of himself or herself and other current or former
10 employees pursuant to the procedures specified in Labor Code section 2699.3.

11 137. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
12 Code except those for which a civil penalty is specifically provided, the established civil penalty for
13 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
14 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
15 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
16 employee per pay period for each subsequent violation.

17 138. Plaintiff is informed and believes and based thereon alleges that Defendants, and
18 each of them, violated the Labor Code sections described herein, including, without limitation, for
19 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
20 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
21 employment and after employment separation; provide employees the opportunity to inspect
22 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
23 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
24 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
25 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
26 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
27 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

28 ///

1 139. Moreover, Plaintiff and other Aggrieved Employees within the State of California
2 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
3 connection with their herein-described claims for civil penalties.

4 **DEMAND FOR JURY TRIAL**

5 140. Plaintiff demands a trial by jury on all causes of action contained herein.

6 **PRAYER**

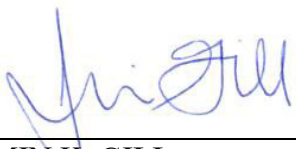
7 WHEREFORE, on behalf of Plaintiff, Class Members and Aggrieved Employees, Plaintiff
8 prays for judgment against Defendants as follows:

- 9 A. An order certifying this case as a Class Action;
- 10 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
11 counsel as class counsel;
- 12 C. Damages for all wages earned and owed, including minimum wages, overtime
13 wages, and unpaid vested vacation, under Labor Code sections 227.3, 510, 558.1,
14 1194, 1197 and 1199;
- 15 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 16 E. Damages for unpaid premium wages from missed meal and rest periods under,
17 among other Labor Code sections, 512, 558.1 and 226.7;
- 18 F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision
19 (e) and 558.1;
- 20 G. Waiting time penalties under Labor Code sections 203 and 558.1;
- 21 H. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
22 1174.5, 1197.1, and 2699;
- 23 I. Damages under Labor Code sections 2802 and 558.1;
- 24 J. Preliminary and permanent injunctions prohibiting Defendants from further violating
25 the California Labor Code and requiring the establishment of appropriate and
26 effective means to prevent future violations;
- 27 K. Restitution of wages and benefits due which were acquired by means of any unfair
28 business practice, according to proof;

- 1 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
2 M. For attorneys' fees in prosecuting this action;
3 N. For costs of suit incurred herein; and
4 O. For such other and further relief as the Court deems just and proper.
5

6 Dated: August 11, 2021

J. GILL LAW GROUP, P.C.

7
8 BY: 

9 JASMIN K. GILL

10 Attorneys for Plaintiff PRIMITIVO PEREZ, an
11 individual and on behalf of all others similarly situated
12 and aggrieved
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, over the age of 18 and not
3 a party to the within action. My business address is 515 South Flower Street, Suite 1800, Los
4 Angeles, California 90071.

5 On August 11, 2021, I served the following document(s) described as: **FIRST AMENDED
6 CLASS ACTION COMPLAINT**: on the interested parties to this action by placing a copy thereof
7 enclosed in a sealed envelope addressed as follows:

8 D&G RESTAURANTS, LLC
9 26531 Paseo Tranquila
10 San Juan Capistrano, CA 92675

11 Gregg Solomon
12 26531 Paseo Tranquila
13 San Juan Capistrano, CA 92675

14 **Defendants**

15 David D. Bibiyan (*david@tomorrowlaw.com*)
16 Jeffrey Klein (*jeff@tomorrowlaw.com*)
17 BIBIYAN LAW GROUP, P.C.
18 8484 Wilshire Boulevard, Suite 500
19 Beverly Hills, California 90211

20 **Co-Counsel for Plaintiff Primitivo Perez**

21 ☒ (BY U.S. MAIL) I am readily familiar with the business practice for collection and
22 processing of correspondence for mailing with the United States Postal Service. This
23 correspondence shall be deposited with the United States Postal Service this same day in the
24 ordinary course of business at our office's address in Los Angeles, California. Service made
25 pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the
26 postal cancellation date of postage meter date on the envelope is more than one day after the
27 date of deposit for mailing contained in this affidavit.

28 Executed this 11th day of August 2021 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

25 

26 _____
27 Jasmin K. Gill, Esq.